



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ADP Case 07-14122
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro Se*

December 10, 2008

Decision

ROSS, Wilford H., Administrative Judge:

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Public Trust Position Application (SF 85P) on March 7, 2006. (Government Exhibit 1.) On March 21, 2008, DOHA issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and

eligibility for the Applicant to hold a sensitive Automated Data Processing Systems Position (ADP-I/II/III). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR in writing on April 22, 2008, and requested a hearing before a DOHA Administrative Judge. Department Counsel was ready to proceed on June 4, 2008. This case was assigned to the undersigned on June 4, 2008. A notice of hearing was issued on June 12, 2008, scheduling the hearing for July 1, 2008.

At the hearing the Government presented eight exhibits, which were admitted without objection. (Government Exhibits 1 through 6.) The Applicant presented eleven exhibits (Applicant's Exhibits A through J), called one witness and testified on her own behalf. The record remained open to allow the Applicant to submit additional documentation. She submitted one additional exhibit, without objection. (Applicant's Exhibit K.) The official transcript was received on July 11, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to occupy an Automated Data Processing position is granted.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 42 years old and single. She is seeking to obtain a determination of trustworthiness in connection with her employment.

The Government opposes the Applicant's request for a determination of trustworthiness, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is financially overextended and at risk of having to engage in illegal acts to obtain funds. She admitted all of the allegations under this Guideline.

The Applicant began working in the Defense industry in 2006. Her financial problems began about June 2002, when she left an abusive relationship with her ex-

boyfriend. She walked out of their apartment, literally with only the clothes on her back, and had to start a new life. (Transcript at 60-61.) She did not forward her mail, and did not attempt to contact her ex-boyfriend until this case began. She did not attempt to correct the situation and her credit got out of hand due to lack of knowledge. (Transcript at 28-30.) The Applicant noted that all of the credit reports obtained by the Government refer to a Post Office Box address that the Applicant never used. (Government Exhibits 3 through 6.)

Subparagraphs 1.a. and 1.b. The Applicant admits that she owes approximately \$10,362.47 to the Department of Education for student loans. The Applicant was making occasional payments on this account from 2004 until March of this year. At that time, the Applicant made a payment arrangement with the collection agency for the Department of Education. She made an initial \$300.00 payment in March 2008, and arranged for \$120.00 a month to be taken directly out of her bank account. Including her 2007 tax refund and stimulus check, which were also applied directly to her account, she has paid \$1,635.00 so far this year towards these debts. She evinces a credible intent to continue to pay these debts until they are paid off. (Applicant's Exhibit A; Transcript at 24-30, 39-40.)

Subparagraph 1.c. The Applicant admits that a judgment was entered against her in 2003 for \$4,379.00. This was related to the apartment she lived in with her ex-boyfriend until she left in 2002. The Applicant's name was on the lease, along with her ex-boyfriend. She did not have her name taken off the lease when she left. At some subsequent time her ex-boyfriend broke the lease and a judgement was entered against them both. The Applicant had no knowledge of this judgment until receiving the SOR. She submitted evidence that, at the time the lease was being broken and the judgment issued, she was living somewhere else. (Government Exhibit 2 at 2; Applicant's Exhibit F; Transcript at 30-32.)

The Applicant did not have contact information for the collection agency on this debt until receiving the Government's proposed evidence. Once she had that information, the Applicant sent the agency \$100.00 on the account, in order to start negotiations with them. (Applicant's Exhibit B.) As of the day of the hearing, she had not heard from this office. She expresses a credible intent to resolve this indebtedness. (Transcript at 40-45.) Subsequent to the hearing, she submitted a written statement dated July 17, 2008, from her ex-boyfriend stating, "I take full responsibility for the circumstances related to this financial obligation." (Applicant's Exhibit K at 8.)

Subparagraph 1.d. The Applicant admits that she owes approximately \$956.00 to a bank on a credit card. She stated that she had no notice of this debt until she received the SOR. (Government Exhibit 2 at 2; Transcript at 45-46.) She submitted a \$40.00 payment to this bank to show good faith and begin negotiations. She expresses a credible intent to resolve this indebtedness. (Applicant's Exhibit D; Transcript at 24-35.)

Subparagraph 1.e. The Applicant admits that she owes a hospital \$974.00 in medical expenses. After much research, the Applicant was able to find the collection agency and confirm the nature of the debt. She stated that the address that they were billing was the Post Office Box, discussed earlier, which she never used. (Transcript at 35-37, 46-47.) The Applicant has paid this debt in full. (Applicant's Exhibit K at 2-3, 9-10.)

The Applicant stated several times that she did not have notice of many of these debts. She submitted a signed statement by a friend who says:

I was in the company of [the Applicant] when she opened a package from a government legal representative that contained her credit report. She was very surprised to discover many items on [the] credit report that she was unaware of. I recall her frustration and bewilderment pertaining to the debts listed on the report. (Applicant's Exhibit K at 7.)

The Applicant submitted that her current financial situation is stable. She is able to pay her current debts and work towards resolving her past due indebtedness. In fact, she submitted evidence that she is paying on a credit card account that is not alleged in the SOR. (Government's Exhibits 2 at 2 and 3 at 2; Applicant's Exhibit C; Transcript at 32-34, 51.) Her credit reports show that she is carrying no current debt whatsoever. Her financial difficulties were over a limited time; were related to, or exacerbated by, her leaving her abusive ex-boyfriend; and she is working to pay those debts in a satisfactory fashion. (Transcript at 48.) As of the date the record closed, she had paid \$2,749.00 towards the debts in the SOR.

Paragraph 2 (Guideline E - Personal Conduct).

The Government alleges that the Applicant is ineligible for a determination of trustworthiness because she made false statements to the Government during her investigation. She denied both allegations under this paragraph.

The Applicant filled out a Questionnaire for Public Trust Positions on March 7, 2006. (Government Exhibit 1.) Question 19 asks whether, in the past seven years, the Applicant had been subject to a tax lien. The Applicant answered, "No." This was a false answer, as a tax lien had been filed against her in 1997, and released in December 2006.

Question 20 of the same questionnaire asks the Applicant whether, in the last seven years, she had been 180 days delinquent on any of her debts. She answered, "Yes," and discussed the debts set forth in subparagraphs 1.a. and 1.b., above. She did not disclose the debts set forth in subparagraphs 1.c., 1.d., and 1.e.

The Applicant has consistently maintained, and credibly testified, that she was unaware of the lien and the debts when she filled out the questionnaire. She stated that she suspected she owed back taxes, but had no idea a lien had been filed. She is adamant in stating that she was not intending to deceive the Government with her answers. (Government Exhibit 2; Transcript at 53-55.)

Mitigation

The second line supervisor of the Applicant testified. He supervises about 85 people, and is the person who hired the Applicant. The witness finds the Applicant to be trustworthy and dependable, stating that she is among his top 10 or 12 workers. He would lend her money and trust her in an important matter in his own personal life. (Applicant's Exhibit J, Transcript at 64-72.)

The Applicant submitted a letter of recommendation from her direct supervisor. He states, "[The Applicant] has always displayed a high degree of integrity, responsibility and ambition." (Applicant's Exhibit A.) She was named Teammate of the Month for July 2007. (Applicant's Exhibit G.) The Applicant also submitted both of the evaluations she has received from her employer. They show that she is a well-respected and valued employee. (Applicant's Exhibits H and K at 11-12.)

Policies

When evaluating an Applicant's suitability for a trustworthiness determination, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to sensitive personal information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive personal information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to such information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive personal information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the finding of trustworthiness. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her access.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has had debt problems in the past (Guideline F), and that she gave incorrect answers on a Government questionnaire (Guideline E). The Applicant, on the other hand, has successfully mitigated the Government's case.

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant admits that she owes the past due debts in the SOR, and has owed them for several years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(a) states that it is mitigating where, “The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Under AG ¶ 20(b), the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.” The Applicant was forced to leave a long term relationship on short notice because her ex-boyfriend abused her. The record shows that she has not engaged in reckless purchasing or showed any other signs of financial poor judgment. The evidence raises this potentially mitigating condition.

Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶ 20(d). The Applicant did not have a good idea of her debts until this proceeding began. She has worked hard to repair her credit, has paid a considerable amount of money over the past few months towards her debts, and evinces a credible intent to pay off all of her past due debts. I conclude this potentially mitigating condition applies. Guideline F is found for the Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The evidence is clear that the Applicant did not have a good idea of the extent of her financial difficulties until receipt of documentation from the Government. She did inform the Government of her largest debts, those set forth in SOR subparagraphs 1.a. and 1.b. In addition, her credible testimonial evidence is that she had no knowledge of any tax lien being filed against her.

Despite the Department Counsel’s best efforts, and looked at in the manner most favorable for the Government, the evidence does not support a finding that the Applicant intentionally falsified her Questionnaire. Human beings, and not just the Applicant, make mistakes. She told the Government all the information that she knew. That information was incomplete. That is all that has happened here. Guideline E is found for the Applicant.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant has a good credit history, with the exception of the debts of concern here. She was forced to leave an abusive relationship, and is still living with the consequences. The record shows that she is paying her past due debts in a way that is acceptable to her largest creditor. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations and alleged falsification.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a sensitive Systems Position. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: FOR THE APPLICANT

 Subparagraph 1.a.: For the Applicant.
 Subparagraph 1.b.: For the Applicant.
 Subparagraph 1.c.: For the Applicant.
 Subparagraph 1.d.: For the Applicant.
 Subparagraph 1.e.: For the Applicant.

Paragraph 2, Guideline E: FOR THE APPLICANT

 Subparagraph 2.a.: For the Applicant.
 Subparagraph 2.b.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

WILFORD H. ROSS
Administrative Judge